

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

QUINTEZ TALLEY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 3:19-183
	)	
JERRY SANDUSKY, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

Pending before the Court are the objections by *pro se* Plaintiff Quintez Talley (Docket No. [8]), to the December 5, 2019, Report and Recommendation of Chief United States Magistrate Judge Cynthia Reed Eddy, (Docket No. [5]), which recommended that Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Docket No. [4]) be denied pursuant to 28 U.S.C. § 1915(g) and that the case be dismissed, without prejudice, because Plaintiff had accumulated "three strikes" within the meaning of § 1915(g) and had not demonstrated that the imminent danger exception applies. Plaintiff's sole argument in support of his objections asserts that he does not have "three strikes" because two of the cases cited by the Chief Magistrate Judge were not lawsuits challenging "prison conditions." (Docket No. 8).

The Court has reviewed the matter and concludes that the Report and Recommendation correctly analyzes the issues and makes a sound recommendation that Plaintiff has accrued "three strikes" under § 1915(g) and that his motion to proceed in forma pauperis must be denied. In this

Court's estimation, Plaintiff's objections are without merit as the plain language of § 1915(g) and prevailing caselaw interpreting same make clear that, aside from habeas petitions, which are excluded from consideration, the "three strikes" test applies to any other civil action or appeal meeting the other requirements, including that the case is brought at a time when the prisoner is incarcerated or detained. *See* 28 U.S.C. § 1915(g) ("In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."); *see also* *Byrd v. Shannon*, 715 F.3d 117, 123-24 (3d Cir. 2013) (phrase "action or appeal" in § 1915(g) is interpreted with plain meaning of those terms and "strikes may be accrued in actions or appeals regardless of whether the prisoner has prepaid the filing fee or is proceeding IFP"). Upon consideration of Plaintiff's Motion and his Complaint, together with the Report and Recommendation and objections filed by Plaintiff, and after undertaking a *de novo* review of the record,

IT IS HEREBY ORDERED that Plaintiff's Objections [8] are OVERRULED as they are without merit;

IT IS FURTHER ORDERED that the Report and Recommendation of the Magistrate Judge, dated December 5, 2019, [5] is ADOPTED as the Opinion of the Court;

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to Proceed in forma pauperis [4] is DENIED and this case is DISMISSED, without prejudice, to Plaintiff reopening the matter by paying the full statutory and administrative filing fees of \$400.00;

IT IS FURTHER ORDERED that the Clerk of Court mark this case CLOSED; and,

FINALLY, IT IS ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

/s/ Nora Barry Fischer  
Nora Barry Fischer  
Senior U.S. District Judge

Dated: January 6, 2020

cc/ecf: Honorable Cynthia Reed Eddy  
Chief United States Magistrate Judge

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